Finding 5 - Unused routers purchased with E-rate funds

Condition:

The 37 routers purchased with E-rate funds during FY 2000 are currently being unused in storage at the ACAC building. The routers were replaced during Year 4 with improved technology products. The beneficiary had intended to use the routers in connection with funding from Year 5, but USAC denied the beneficiary's Year 5 funding request. The beneficiary has appealed this decision, and the outcome is still unknown.

We were unable to determine the total dollar value of the 37 routers purchased with E-rate funds due to the lack of adequate descriptions on the service provider (IBM) invoices. The fixed asset listing prepared by the Accounting Department places a value of $6,276 for each router – which would total $232,212 for the 37 routers.

Criteria:

USAC does not provide specific guidance regarding the timeframe that products purchased with E-rate funds must be used. However, using the routers for such a limited time would tend to indicate poor controls over the implementation of technology products purchased with E-rate funds, and could also be viewed as a waste of USAC funds.

Beneficiary's Response:

> The District appreciates the auditor's reference to the fact that there are no specific guidelines relating either to the timeframe when products purchased with E-rate funds must be used, or to the duration of that use. The reasons why the routers are not in use as

part of the campus connectivity project is actually a result of improvements to the wide area network that made their function in the connectivity configuration redundant and inefficient. This seems to ascribe inefficiency and lack of control to the District's decisions. That is where We disagree that the District's re-location of the routers is inefficient or due to a lack of control. We have tried to plan as strategically as possible for implementation of E-Rate projects that provide as much instructional technology and connectivity as possible, while managing our resources (equipment and budget) as effectively as possible. The brief chronology below will explain our use of the routers.

The project for campus connectivity that the routers are a part of is one of the cornerstone E-Rate projects of the District, and our management of campus connectivity projects has been intended to ensure the best voice/data network possible. We decided on the initial configuration and strategy for management precisely because we could integrate technology advances very efficiently, and in some cases transparently. A chronology of the campus connectivity projects will be helpful to understand why the routers were moved from the campus connectivity function to a year 5 E-Rate project (Voice Over Internet Protocol). In the initial configuration of the network, through year 4, campus connectivity was established by bringing T1 data (and then voice) lines to the campus, connecting them to routers, and then connecting the routers to switches. In year 4, as part of the WAN upgrade project to improve WAN speed and to move to an integrated voice/data network, the external connection at each campus was made directly to a campus switch. Because of the improvements to the WAN, the router connection became superfluous. Rather than not use the routers at all; however, the District relocated them to serve as part of the equipment configuration for a year 5 E-Rate project (VOIP).

It was not because the use of the routers was poorly planned that they were moved to a more appropriate application, it was that the very useful and successful upgrade of the WAN made full use of the switches, and the routers became available. While the timeframe for the use of the routers was short (though not unusual in network scenarios), the use of the routers within the campus connectivity function made perfect sense, as did the WAN upgrade when the opportunity arose as part of year 4 projects. We would emphasize that the routers were included in the year 5 E-Rate projects to keep them in use in an E-Rate project. Rather than poor planning, our proposal to re-configure the use of our equipment allowed us to use the flexibility in our technology plan to use our resources more effectively, again, all in E-Rate projects

Part of the plan for technology at every district, and at every other technology-driven organization, is to manage the resources as effectively as possible, and where required, as dynamically as necessary. Again, rather than a waste of money, the re-use of the routers will save money by allowing us to use the routers for a longer time in more appropriate, E-Rate funded, circumstances.

AFFIDAVIT OF RICHARD DUNCAN
IN SUPPORT OF LETTER OF APPEAL OF
YSLETA INDEPENDENT SCHOOL DISTRICT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

BEFORE ME, the undersigned authority, on this day personally appeared Richard Duncan, known to me to be the person whose name is subscribed below, who after being by me duly sworn, upon his oath, deposed and stated as follows:

"My name is Richard Duncan. I am over the age of eighteen years, am of sound mind, and am otherwise competent and able to testify herein. I am employed by the Ysleta Independent School District ("YISD") and am authorized to make this affidavit.

I am currently in the position of Systems/Database Administration in the Technology Department of YISD. I have over 26 years of experience in my field, and have been employed by YISD for almost 15 years. I am personally familiar with transactions and dealings of YISD relating to the matters set forth below. As such, among other things, I have personal knowledge of facts and statements stated herein. I am able to swear, and do swear, the facts and statements contained herein are true and correct. The capitalized terms herein have the same meaning as in the Letter of Appeal of YISD.

Attached or included with this Affidavit or the accompanying e-mail are records from YISD. These records are kept by YISD in the regular course of business and it was the regular course of business of YISD for an employer representative of YISD, with knowledge of the act, event, condition, opinion, or diagnosis recorded, to make the record or to transmit information thereof to be included in such record, and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the exact duplicates of the originals.

YISD is an independent school district under Texas law located in El Paso County, Texas. I am familiar with the Letter of Appeal of YISD, to which this Affidavit is attached, regarding that certain Recovery of Erroneously Disbursed Funds letter dated May 13, 2004 (the "Decision") from the Universal Service Administrative Company ("USAC") for the Schools and Libraries Division (the "SLD") of the Federal Communication Commission (the "FCC"). The Decision purports to seek recovery of sum of $208,990.80 from YISD (the "Disputed Funds") in connection with YISD's Form 471 Application Number 179273 (the "Year 3 Form 471") for Funding Year 2000-2001 a/k/a

EXHIBIT
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"Year 3" of the E-Rate Program (the "Program").[1] The Letter of Appeal is being timely made within sixty days of the date of the Decision.

In the first place, YISD adopted a Long-Range Information Technology Plan in March 1998 (the "1998 Technology Plan"). A true and correct copy of the 1998 Technology Plan, with supplements and amendments, is attached hereto as Exhibit "1" and incorporated herein. The 1998 Technology Plan contemplated that YISD would acquire the necessary technology to establish and maintain an adequate computer network at YISD.

As used in the technology area at the time, the term "network" referred to a system of computers interconnected by telephone lines or cables, permitting the sharing of information and data amongst those computers. The term "router" is used to describe a device which handle message transfers within or between computer networks, by forwarding packets of data according to set protocols and instructions.

The 1998 Technology Plan was later superseded by an Information Technology Plan 2001-2004 (the "2001 Technology Plan"). A true and correct copy of the 2001 Technology Plan, with supplements and amendments, is attached hereto as Exhibit "2" and incorporated herein. The 2001 Technology Plan also contemplated the acquisition and maintenance of a sufficient computer network at YISD facilities.

In 1999, YISD had a limited computer network in place. YISD had three IBM 6611 routers and more than fifty Kentrox CSU/DSU's [one for each school] located at Central Office. These units then connected via a T1 line to another Kentrox CSU/DSU at each campus and into an IBM 2210 router. At the campuses, connectivity from the desktop to the network was accomplished through IBM 8224 Ethernet Stackable Hubs. At YISD's Central Office, connectivity from the desktop to the network was done with IBM 8260 Ethernet Blade Center Hubs. The IBM 2210 routers were later taken off the market.

Such network of YISD, however, was obsolete and was insufficient to meet the educational needs of YISD students and the goals of the 1998 Technology Plan. YISD then decide to upgrade aspects of its existing computer network.

Pursuant to the 1998 Technology Plan, YISD decided to seek funding under Year 3 of the Program for various goods and services related to such network upgrade. On November 11, 1999, YISD posted a Form 470 on the SLD website in accordance with Program rules for "Router/Campus

[1] The SLD used to refer to funding years as Year 1, Year 2, etc., but changed the terminology of the Year 5 funding year to Year 2002, with similar changes for subsequent years of the Program. This Affidavit will use the term "Year 3" to refer to Funding Year 2000-2001, "Year 4" to refer to Funding Year 2001-2002, "Year 5" to refer to Funding Year 2002-2003, "Year 6" to refer to Funding Year 2003-2004, and "Year 7" to refer to Funding Year 2004-2005.

Network Electronics" (the "Year 3 Form 470").[2] A true and correct copy of the Year 3 Form 470 is attached hereto as Exhibit "3" and is incorporated herein.

After a competitive procurement process beginning on November 16, 1999, YISD awarded a contract to International Business Systems ("IBM") to provide the goods and services for the network electronics upgrade. A contract and statement of work between YISD and IBM for such work was signed on January 12, 2000 (the "Year 3 Contract"). A true and correct copy of the Year 3 Contract is attached hereto as Exhibit "4" and is incorporated herein.

Thereafter, YISD filed the Year 3 Form 471 with the SLD on or about January 17, 2000. A true and correct copy of the Year 3 Form 471 is attached hereto as Exhibit "5" and is incorporated herein. The Year 3 Form 471 and the Year 3 Contract provided for the installation, among other things, Cisco 2650 routers, installed, configured and tested, including implementation documentation at eligible YISD facilities specified for that funding year (the "Routers"). It should also be pointed out that, as a matter of maintaining equity between YISD campuses, YISD also concurrently acquired and installed similar routers at over 20 schools [not eligible for Program funding], using its own funds and resources.

In short, the Year 3 Contract proposed replacement of the old routers with the Routers. YISD replaced these pre-existing routers for two primary reasons. In the first place, the IBM routers that were part of the original serial network were aging and their maintenance costs were becoming greater each year and units were beginning to fail and replacements were becoming scarce. Second, the IBM routers only supported 1 ethernet interface per router. This did not allow the district to accommodate the NetSchools Project, which had computers set up on a separate IP address scheme. It is also important to keep in mind, that, at the time of request for funding for the upgrade for such old routers, the high-speed WAN service [described further below] was not an offering that was fundable under Program guidelines. Even if it had been, it was cost-prohibitive to make the change at the time as the service offering far exceeded what the YISD found to be a reasonable price for the service at that time; subsequently, the pricing became much more favorable]. The decision to upgrade the old routers was the only available, reasonable solution at that time.

The SLD approved the Year 3 Form 471 by means of a Funding Commitment Decision Letter dated May 5, 2000 (the "Year 3 Funding Letter"). A true and correct copy of the Year 3 Funding Letter is attached hereto as Exhibit "6" and is incorporated herein.

Between October 25, 2000 and November 5, 2000, the Routers were installed at the various YISD facilities, in accordance with the terms and conditions of the Year 3 Contract. All of the Routers were in fact installed at eligible facilities, at such locations and in such numbers as described

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[2] The Year 3 Form 470 is one of several Form 470s posted by YISD at the time, but is the one at issue in the Letter of Appeal. For Year 3 of the Program, YISD submitted and treated separately particular projects. The Year 3 documentation described herein relates to that for the network electronics project. Similarly, the attached documentation for later Program years relates only to the relevant projects, and not to all projects for that year.

in the Year 3 Form 471. The Routers were thereafter in fact used for the network operations at YISD.

Upon further review and reflection, and additional research and investigation, YISD determined that its existing computer network, even with the upgrades including the Routers, was insufficient to satisfy the ever-changing needs of its students and the ever-increasing demands for network capacity and speed. Changed circumstances required YISD to explore alternative methodologies of configuring its computer network, in order to meet instructional and related needs.

After extensive review, YISD decided that a "High-speed wide area network that utilized layer 3 switching" or "High-speed WAN" should be established as the network methodology for YISD facilities. A "High-speed wide area network", in this context, means a computer network, usually constructed with leased high-speed [100 megabit] fiber optic lines, that provides coverage throughout the extensive YISD service area. It differs from the previous network by using layer 3 switching instead of routing, which increases network performance, and efficiency as well improves configuration flexibility and allows the use of standard Ethernet between locations, removing additional protocols from the transport. The components of a high-speed wide area network include a direct connection to the campus distribution switch, being a Cisco Catalyst 4908, via a managed 100 megabit leased fiber connection. The 4908 distribution switch was in place in conjunction with a network electronics upgrade that had been done in a previous year, and used in conjunction with the previous routed serial network. YISD's intent in removing the Routers after the high-speed WAN upgrade was to avoid theft or damage for two reasons: first for the fiscal liability associated with any theft or damage and second to ensure that the Routers would be available for use with a proposed Voice Over IP project that had been submitted to the SLD as a funding request.

The chief benefits of a high-speed wide area network over the old network were improved performance, additional bandwidth available for future projects such as Voice Over IP, streaming video, point to point video, or video on demand as well as other bandwidth intensive applications that were listed in the then-current Technology Plan. One of the chief complaints from YISD campuses that were utilizing the old network to do classroom work assignments via the Internet or using other network resources was that it was too slow. This slow-speed was due to saturation of the T-1 lines that previously provided service at YISD. Essentially, classroom Internet usage rates increased unexpectedly at YISD and demands on the system increased for that reason and due to increasing file sizes. One must also keep in mind that, during such time frame, the number and size of files or presentations available on the Internet for educational purposes also increased significantly. In other words, more websites often had more large, video or multi-media presentations available for review, contrary to prior times. With the old network, it was difficult, if not impractical, for YISD students to fully utilize such educational resources. More importantly, due to the slowness of the old network, it was often difficult for students to be able to even gain access to the Internet. Getting logged onto the Internet had become such a slow process that many teachers and students simply stopped trying to do so. In other cases, more persistent persons were able to get access, but the remaining classroom time to utilize the Internet resources was significantly

reduced due to such delays. To be clear about the low speed of the old network, it needs to be pointed out that the Internet access speed on the old network was slower than a basic, dial-up, phone-line Internet access [which millions of people nationwide have rejected in favor of high-speed access, believing even that was too slow]. In short, the old network had become a serious detriment to the education of YISD students.

Once the high speed wide area network offering became reasonable and YISD could justify the expense in alignment with the updated version of the Technology Plan, YISD recognized that, if it chose to install a high-speed wide area network solution, it would no longer need the Routers for its network. Specifically, YISD would not need the Routers in the interim period because of the use of layer 3 switching in conjunction with the newer transport media [fiber optic cable] that was being used to deliver network access to the campuses. The Routers were not required anymore, under such high-speed wide area network.

In light of the fact that the Routers would not be needed for the YISD computer network if the high-speed wide area network was established, YISD investigated alternative uses for the Routers for eligible projects at eligible facilities. In other words, even though the original use of the Routers became obsolete, YISD looked for new uses for the Routers that were consistent with the intent, scope, and eligibility requirements of the Program. YISD wanted any new use to be an eligible use at eligible facilities. As part of this, the Router serial numbers were inventoried and catalogued to the specific eligible site location to which they had been assigned; in other words, YISD kept track of exactly which Router went to which eligible location. It was not a situation where the Routers were to be transferred from eligible locations to ineligible locations relatively shortly after installation. In short, YISD did not want the Routers to go to waste.[3]

In Year 4 of the Program, YISD sought funding for a high-speed wide area network as part of its telecommunications request. YISD posted its Form 470 for Year 4 of the Program (the "Year 4 Form 470"). A true and correct copy of the Year 4 Form 470 is attached hereto as Exhibit "7" and is incorporated herein. After a procurement process, and subsequent award and signing of a contract for such project, YISD filed its Form 470 for Year 4 on January 16, 2001 (the "Year 4 Form 471"). A true and correct copy of the Year 4 Form 471 is attached hereto as Exhibit "8" and is incorporated herein. The SLD approved the Year 4 Form 471 by means of a Funding Commitment Decision Letter dated December 4, 2001 (the "Year 4 Funding Letter"). A true and correct copy of the Year 4 Funding Letter is attached hereto as Exhibit "9" and is incorporated herein. Attached hereto as Exhibit "10" is a true and correct copy of an illustration of the YISD high-speed wide area network.

[3] It is also important to remember that YISD had also acquired over 20 similar routers using its own funds, which were similarly unnecessary for the high speed wide area network. Therefore, in addition to the share paid under the Program by YISD for the Routers, YISD also had a significant financial incentive to ensure that it received the benefit of the entire cost incurred by YISD for these other self-purchased routers. In other words, YISD had invested in 20 routers using its own money, as compared to 37 routers under the Program.

Previously, due to the proposed establishment of the high-speed wide area network, YISD decided that the Routers should be used in connection with a Voice Over Internet Protocol a/k/a Voice Over IP a/k/a VOIP project for which funding was sought under Year 4 of the Program. A Voice Over IP project would allow YISD to consolidate its voice and data networks. YISD has a voice network and a separate data network [being the high-speed wide area network]. This project permits voices to travel over the data network lines, thereby allowing YISD to terminate at least one T-1 line per each of the sixty-odd campuses. Such T-1 lines are eligible for Priority 1 Program funding; through use of the Voice Over IP project, YISD could then eliminate Program funding requests for the terminated T-1 lines, saving Program funds. In addition, the Voice Over IP project also permitted a much greater capacity of voice to be carried than under the voice-only network. Importantly, the Voice Over IP project in Year 4 of the Program could utilize the Routers, since the equipment to be placed into the Nortel option 11 switches under that project would require routing [and thus routers] instead of layer 3 distribution. The use of the Routers on hand would therefore obviate the need to acquire new routers as part of that Voice Over IP project. The Voice Over IP project sought to utilize the Routers for eligible purposes at eligible locations. Unfortunately, Year 4 funding was denied by the SLD for such project for that year.

Thereafter, YISD reviewed extensively whether to re-seek such funding for the Voice Over IP project for Year 5 of the Program. Again, YISD proposed use of the Routers in connection with that project. A true and correct copy of some planning documentation is attached hereto as Exhibit "11" and is incorporated herein. Ultimately, though, such project was not included in the final Form 471 for Year 5 of the Program. YISD, though, planned to continue with that project in future Program years.

The high-speed wide area network was constructed by YISD during June and July, 2002. As noted above, YISD used its own funds and other non-Program sources for the original implementation of that WAN project. During that time period, since the Routers were no longer being utilized for network purposes and YISD desired to ensure the safety of the Routers for the proposed future use, YISD removed the Routers from their initial sites in the summer of 2002 and placed them in a secure storage area pending subsequent use as planned.

In any event, even if the Voice Over IP project had been included in YISD's request for Year 5 funding, such funding would have been denied. Indeed, YISD was denied all internal connections funding by the SLD sought by its Form 471 for Year 5 of the Program.

YISD appealed the decision of the SLD in the Year 5 Funding Letter to the Federal Communication Commission (the "FCC"). By FCC Order 03-313 dated December 8, 2003 in *Matter of Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, et. al.*, CC Docket Nos. 96-45 and 97-21 (the "Ysleta Order"), the FCC effectively upheld the denial of Year 5 funding, but granted a waiver of Program rules to permit YISD to re-file its application for Year 5 funding under certain conditions.

Pursuant to the Ysleta Order, YISD in early 2004 did re-file for Year 5 funding. Unfortunately, by that time, due to changes in technology over the preceding 3 to 4 years, the Routers were now obsolete in terms of their use in the proposed Voice Over IP Project. In addition, since the Voice Over IP Project had been sought for Year 6 funding, the same funding was not sought with the Year 5 re-filing.

Shortly beforehand, YISD was already working on its proposed projects for Year 6 of the Program. In other words, YISD was required to plan for Year 6 projects before any final decision was made on its Year 5 projects. For Year 6 of the Program, YISD planned to utilize the Routers for the Voice Over IP project. Again, YISD wanted to re-use the Routers for an eligible project at eligible locations. On or about November 4, 2002, YISD posted its Form 470 for Year 6 of the Program (the "Year 6 Form 470"). A true and correct copy of the Year 6 Form 470 is attached hereto as Exhibit "12" and is incorporated herein. After a procurement process, and subsequent award and signing of a contract for such project, YISD filed its Form 470 for Year 6 on January February 5, 2002 (the "Year 6 Form 471"). A true and correct copy of the Year 6 Form 471 is attached hereto as Exhibit "13" and is incorporated herein.

Once again, there was a significant delay by the SLD in making a decision on YISD request for funding, here under the Year 6 Form 471. In fact, the SLD did not make such a determination until almost 11 months after the beginning of Year 6. The SLD approved the Year 6 Form 471 by means of a Funding Commitment Decision Letter dated April 20, 2004 (the "Year 6 Funding Letter"). A true and correct copy of the Year 6 Funding Letter is attached hereto as Exhibit "14" and is incorporated herein. Again, due to the delays since the Year 6 Form 471 was filed [not to mention the Year 4 and Year 5 efforts to fund the Voice Over IP project], and the accompanying changes in technology, the Routers can no longer be reasonably utilized for the Voice Over IP project at this time.

Nevertheless, despite its numerous tries to date, YISD did not give up on its effort to re-utilize the Routers for an eligible project at eligible locations. Specifically, in May 2003, YISD began planning to use undertake a proposed dynamic host configuration protocol a/k/a DHCP project, which could use the Routers. "Dynamic host configuration protocol" is a protocol for assigning dynamic IP addresses to devices on a network. This assignment can be done by either a DHCP server or an appliance such as the Routers. This method of addressing devices on a network makes it easier for adding and moving devices throughout the network. At YISD, computers and printers are constantly being added or moved at the campuses or between campuses. By setting up the computer or printer to accept a DHCP address, the DHCP appliance [here, the Routers] dynamically assigns an IP address to the device, keeps track of the IP addresses assigned, and frees up YISD staff from having to manually assign and manage IP addresses. YISD at the time had static IP addresses, maintained by servers. Those servers began to reach the end of their lifespans and began to become unusable and [due to their age and obsolecence] unrepairable. YISD had the choice of acquiring new servers for the static IP addresses under the Program, which were eligible for funding under the Program, or instead moving to the DHCP project.

Rather than seek the Program funding, and for the benefits described above, YISD decided to undertake the DHCP project. Importantly, even though YISD believes the DHCP project was eligible was Program funding, YISD did not seek or use Program funding for the DHCP project. YISD used its own or other resources fo the DHCP project. The DHCP project was commenced in October 2003 by YISD and was recently completed. To be clear, the DHCP project was first discussed before the Audit [as defined below] was concluded, and was begun almost eight months before the Decision was issued. Under the DHCP project, each Router was returned for use in the exact same eligible school at which such Router had been initially installed for the upgrade of the initial project. The useful life of the Routers under the DHCP project is expected to be similar to that the Routers would have had if the old network had remained in place.

It is extremely important to point out that, at this time [being over one year since the Audit was completed], all of the Routers are actually in place and in use, at the same eligible schools, for an otherwise eligible project [even though YISD used its own funds for the DHCP project].

In 2003, USAC conducted an audit of the Year 3 funding under the Program at YISD, investigating a variety of projects and issues (the "Audit"). The Audit included a finding that the Routers were not used properly. Specifically, Finding 5 of the Audit stated as follows:

Finding 5 - Unused routers purchased with E-rate funds

Condition:

The 37 routers purchased with E-rate funds during FY 2000 are currently being unused in storage at the ACAC building. The routers were replaced during Year 4 with improved technology products. The beneficiary had intended to use the routers in connection with funding from Year 5, but USAC denied the beneficiary's Year 5 funding request. The beneficiary has appealed this decision, and the outcome is still unknown.

We were unable to determine the total dollar value of the 37 routers purchased with E-rate funds due to the lack of adequate descriptions on the service provider (IBM) invoices. The fixed asset listing prepared by the Accounting Department places a value of $6,276 for each router – which would total $232,212 for the 37 routers.

Criteria:

USAC does not provide specific guidance regarding the timeframe that products purchased with E-rate funds must be used. However, using the routers for such a limited time would tend to indicate poor controls over the implementation of technology products purchased with E-rate funds, and could also be viewed as a waste of USAC funds.

YISD responded to that finding. A true and correct copy of an excerpt of the YISD Audit response, relative to such finding, is attached hereto as Exhibit "15" and incorporated herein.

The Decision was issued on May 13, 2004, pursuant to the Audit. The Decision states in relevant part:

> *After a thorough investigation, it has been determined that SLD will seek recovery for items not being used for educational purposes. During an audit it was noted that 37 routers were in storage and not being used. The routers cost is $6,276 each. As a result, $208,999.80 will need to be recovered.*

YISD disputes that contention, and is appealing the Decision.

Further affiant sayeth not."

Richard Duncan

SUBSCRIBED TO AND SWORN TO before me on this 6th day of July, 2004, to certify which witness my hand and seal.

CLYDE A. PINE JR.
NOTARY PUBLIC
In and for the State of Texas
My commission expires
November 4, 2007

Notary Public in and for the
State of Texas

Universal Service Administrative Company
Schools & Libraries Divisio

RECOVERY OF ERRONEOUSLY DISBURSED FUNDS

May 13, 2004

Bill Richardson
YSLETA INDEP SCHOOL DISTRICT
9600 SIMS DR
EL PASO, TX 79925 7200

Re:
Funding Year 2000 -2001
Form 471 Application Number: 179273

Dear Applicant:

Reviews of Schools and Libraries Program disbursements occasionally reveal that funds were disbursed in error. Such discoveries may arise out of our periodic audits, attempts by applicants to reduce a funding commitment below the amount already disbursed, or other investigations resulting from our program compliance procedures. For example, funds may be disbursed in error when:

- Services were billed but were not delivered
- Services were billed in excess of the services delivered
- Services were returned but an appropriate refund to SLD was not made

The SLD has determined that the funds detailed on the attached FUNDING DISBURSEMENT SYNOPSIS were disbursed in error. This synopsis includes the specific funding requests, amounts, and reasons for recovery by Funding Request Number (FRN). The SLD must now recover the amount that was disbursed in error.

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Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options because of substantial delays in mail delivery to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

Schools and Libraries Division
Universal Service Administrative Company

A GUIDE TO THE FUNDING DISBURSEMENT SYNOPSIS

Attached to this letter will be a report for each funding request from the application cited at the top of this letter for which a Recovery of Erroneously Disbursed Funds is required. We are providing the following definitions.

• FUNDING REQUEST NUMBER (FRN): A Funding Request Number is assigned by the SLD to each request in Block 5 of your Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 471.

• SPIN (Service Provider Identification Number): A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support programs.

• SERVICE PROVIDER: The legal name of the service provider.

• CONTRACT NUMBER: The number of the contract between the applicant and the service provider. This will be present only if a contract number was provided on the Form 471.

• SERVICES ORDERED: The type of service ordered from the service provider, as shown on
Form 471.

• SITE IDENTIFIER: The Entity Number listed on Form 471 for "site specific" FRNs.

• BILLING ACCOUNT NUMBER: The account number that was established for billing purposes. This will be present only if a Billing Account Number was provided on the Form 471.

• FUNDING COMMITMENT: This represents the total amount of requested funding that the SLD committed to this FRN.

• FUNDS DISBURSED TO DATE: This represents the total funds that have been paid to you for this FRN.

• FUNDS TO BE RECOVERED: This represents the amount of Erroneously Funds Disbursed to Date. These erroneously disbursed funds will have to be recovered.

• DISBURSED FUNDS RECOVERY EXPLANATION: This entry provides a description of the reason SLD is seeking the recovery.

Funding Disbursement Synopsis for Application Number: 179273

Funding Request Number 379524 SPIN: 143005607
Service Provider: International Business Machines Corp.
Contract Number: 20-1206-052CSP
Services Ordered: INTERNAL CONNECTIONS
Site Identifier:
Billing Account Number: 20-1206-052CSP
Funding Commitment: $111,912.92
Funds Disbursed to Date: $320,903.72
Funds to be Recovered: $208,990.80
Disbursed Funds Recovery Explanation:

After a thorough investigation, it has been determined that SLD will seek recovery for items not being used for educational purposes. During an audit it was noted that 37 routers were in storage and not being used. The routers cost is $6,276 each. As a result, $208,990.80 will need to be recovered.

FUNDING DISBURSEMENT SYNOPSIS

On the pages following this letter, we have provided a Funding Disbursement Synopsis for the Form 471 application cited above. The enclosed report includes a list of the FRNs from this application for which recovery of erroneously disbursed funds is necessary. Immediately preceding the Funding Disbursement Report, you will find a guide that defines each line of the Report. The SLD is also sending this information to the applicant named above.

TO APPEAL THIS DECISION

If you wish to appeal the decision indicated in this letter, your appeal must be RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.

2. State outright that your letter is an appeal. Identify which Recovery Of Erroneously Disbursed Funds you are appealing. Indicate the funding request number and date of the Disbursed Funds Recovery letter. Your letter of appeal must also include the applicant name, the Form 471 Application Number, and the Billed Entity Number from the top of your letter.

3. When explaining your appeal, include the precise language or text that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, the SLD will be able to more readily understand and respond appropriately to your appeal. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.

4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by calling the Client Service Bureau. We encourage the use of either the e-mail or fax filing options to expedite filing your appeal.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be RECEIVED BY THE FCC WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER. Failure to meet this requirement will result in automatic dismissal of your appeal. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by calling the

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July 6, 2004

Via Federal Express

Letter of Appeal
Schools and Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany, New Jersey 07891

Re: Letter of Appeal for Ysleta Independent School District
Funding Request Number 379524
Funding Year 2000-2001
SPIN: 143005607
Provider: International Business Machines
Billing Acct. No. 20-1206-052CSP

Dear Sir or Madam:

Introduction

On behalf of the Ysleta Independent School District ("YISD"), this letter and accompanying documentation represent the Letter of Appeal of YISD to that certain Recovery of Erroneously Disbursed Funds letter dated May 13, 2004 (the "Decision") from the Universal Service Administrative Company ("USAC") for the Schools and Libraries Division (the "SLD") of the Federal Communication Commission (the "FCC"). The Decision, the relevant part of which is set forth below in the text of this letter, purports to seek recovery of sum of $208,990.80 from YISD (the "Disputed Funds") in connection with YISD's Form 471 Application Number 179273 (the "Year 3 Form 471") for Funding Year 2000-2001 a/k/a "Year 3" of the E-Rate

EXHIBIT 18

Program (the "Program").[1] This Letter of Appeal is timely made within sixty days of the date of the Decision.

For the reasons set forth below, the Decision should be reversed and overturned in its entirety.

Factual Background

In order to understand the erroneous conclusion in the Decision, it is important to review the factual circumstances of the conduct of YISD upon which the Decision is apparently based.

In the first place, YISD adopted a Long-Range Information Technology Plan in March 1998 (the "1998 Technology Plan"). A true and correct copy of the 1998 Technology Plan, with supplements and amendments, is attached hereto as Exhibit "1" and incorporated herein. The 1998 Technology Plan contemplated that YISD would acquire the necessary technology to establish and maintain an adequate computer network at YISD.

As used in the technology area at the time, the term "network" referred to a system of computers interconnected by telephone lines or cables, permitting the sharing of information and data amongst those computers. The term "router" is used to describe a device which handle message transfers within or between computer networks, by forwarding packets of data according to set protocols and instructions.

The 1998 Technology Plan was later superseded by an Information Technology Plan 2001-2004 (the "2001 Technology Plan"). A true and correct copy of the 2001 Technology Plan, with supplements and amendments, is attached hereto as Exhibit "2" and incorporated herein. The 2001 Technology Plan also contemplated the acquisition and maintenance of a sufficient computer network at YISD facilities.

In 1999, YISD had a limited computer network in place. YISD had three IBM 6611 routers and more than fifty Kentrox CSU/DSU's [one for each school] located at Central Office. These units then connected via a T1 line to another Kentrox CSU/DSU at each campus and into an IBM 2210 router. At the campuses, connectivity from the desktop to the network was

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[1] The SLD used to refer to funding years as Year 1, Year 2, etc., but changed the terminology of the Year 5 funding year to Year 2002, with similar changes for subsequent years of the Program. This Letter of Appeal will use the term "Year 3" to refer to Funding Year 2000-2001, "Year 4" to refer to Funding Year 2001-2002, "Year 5" to refer to Funding Year 2002-2003, "Year 6" to refer to Funding Year 2003-2004, and "Year 7" to refer to Funding Year 2004-2005.

accomplished through IBM 8224 Ethernet Stackable Hubs. At YISD's Central Office, connectivity from the desktop to the network was done with IBM 8260 Ethernet Blade Center Hubs. The IBM 2210 routers were later taken off the market.

Such network of YISD, however, was obsolete and was insufficient to meet the educational needs of YISD students and the goals of the 1998 Technology Plan. YISD then decide to upgrade aspects of its existing computer network.

Pursuant to the 1998 Technology Plan, YISD decided to seek funding under Year 3 of the Program for various goods and services related to such network upgrade. On November 11, 1999, YISD posted a Form 470 on the SLD website in accordance with Program rules for "Router/Campus Network Electronics" (the "Year 3 Form 470").[2] A true and correct copy of the Year 3 Form 470 is attached hereto as Exhibit "3" and is incorporated herein.

After a competitive procurement process beginning on November 16, 1999, YISD awarded a contract to International Business Systems ("IBM") to provide the goods and services for the network electronics upgrade. A contract and statement of work between YISD and IBM for such work was signed on January 12, 2000 (the "Year 3 Contract"). A true and correct copy of the Year 3 Contract is attached hereto as Exhibit "4" and is incorporated herein.

Thereafter, YISD filed the Year 3 Form 471 with the SLD on or about January 17, 2000. A true and correct copy of the Year 3 Form 471 is attached hereto as Exhibit "5" and is incorporated herein. The Year 3 Form 471 and the Year 3 Contract provided for the installation, among other things, Cisco 2650 routers, installed, configured and tested, including implementation documentation at eligible YISD facilities specified for that funding year (the "Routers"). It should also be pointed out that, as a matter of maintaining equity between YISD campuses, YISD also concurrently acquired and installed similar routers at over 20 schools [not eligible for Program funding], using its own funds and resources.

In short, the Year 3 Contract proposed replacement of the old routers with the Routers. YISD replaced these pre-existing routers for two primary reasons. In the first place, the IBM routers that were part of the original serial network were aging and their maintenance costs were becoming greater each year and units were beginning to fail and replacements were becoming scarce. Second, the IBM routers only supported 1 ethernet interface per router. This did not allow

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[2] The Year 3 Form 470 is one of several Form 470s posted by YISD at the time, but is the one at issue in this Letter of Appeal. For Year 3 of the Program, YISD submitted and treated separately particular projects. The Year 3 documentation described herein relates to that for the network electronics project. Similarly, the attached documentation for later Program years relates only to the relevant projects, and not to all projects for that year.

the district to accommodate the NetSchools Project, which had computers set up on a separate IP address scheme. It is also important to keep in mind, that, at the time of request for funding for the upgrade for such old routers, the high-speed WAN service [described further below] was not an offering that was fundable under Program guidelines. Even if it had been, it was cost-prohibitive to make the change at the time as the service offering far exceeded what the YISD found to be a reasonable price for the service at that time; subsequently, the pricing became much more favorable]. The decision to upgrade the old routers was the only available, reasonable solution at that time.

The SLD approved the Year 3 Form 471 by means of a Funding Commitment Decision Letter dated May 5, 2000 (the "Year 3 Funding Letter"). A true and correct copy of the Year 3 Funding Letter is attached hereto as Exhibit "6" and is incorporated herein.

Between October 25, 2000 and November 5, 2000, the Routers were installed at the various YISD facilities, in accordance with the terms and conditions of the Year 3 Contract. All of the Routers were in fact installed at eligible facilities, at such locations and in such numbers as described in the Year 3 Form 471. The Routers were thereafter in fact used for the network operations at YISD.

Upon further review and reflection, and additional research and investigation, YISD determined that its existing computer network, even with the upgrades including the Routers, was insufficient to satisfy the ever-changing needs of its students and the ever-increasing demands for network capacity and speed. Changed circumstances required YISD to explore alternative methodologies of configuring its computer network, in order to meet instructional and related needs.

After extensive review, YISD decided that a "High-speed wide area network that utilized layer 3 switching" or "High-speed WAN" should be established as the network methodology for YISD facilities. A "High-speed wide area network", in this context, means a computer network, usually constructed with leased high-speed [100 megabit] fiber optic lines, that provides coverage throughout the extensive YISD service area. It differs from the previous network by using layer 3 switching instead of routing, which increases network performance, and efficiency as well improves configuration flexibility and allows the use of standard Ethernet between locations, removing additional protocols from the transport. The components of a high-speed wide area network include a direct connection to the campus distribution switch, being a Cisco Catalyst 4908, via a managed 100 megabit leased fiber connection. The 4908 distribution switch was in place in conjunction with a network electronics upgrade that had been done in a previous year, and used in conjunction with the previous routed serial network. YISD's intent in removing the Routers after the high-speed WAN upgrade was to avoid theft or damage for two reasons: first

for the fiscal liability associated with any theft or damage and second to ensure that the Routers would be available for use with a proposed Voice Over IP project that had been submitted to the SLD as a funding request.

The chief benefits of a high-speed wide area network over the old network were improved performance, additional bandwidth available for future projects such as Voice Over IP, streaming video, point to point video, or video on demand as well as other bandwidth intensive applications that were listed in the then-current Technology Plan. One of the chief complaints from YISD campuses that were utilizing the old network to do classroom work assignments via the Internet or using other network resources was that it was too slow. This slow-speed was due to saturation of the T-1 lines that previously provided service at YISD. Essentially, classroom Internet usage rates increased unexpectedly at YISD and demands on the system increased for that reason and due to increasing file sizes. One must also keep in mind that, during such time frame, the number and size of files or presentations available on the Internet for educational purposes also increased significantly. In other words, more websites often had more large, video or multi-media presentations available for review, contrary to prior times. With the old network, it was difficult, if not impractical, for YISD students to fully utilize such educational resources. More importantly, due to the slowness of the old network, it was often difficult for students to be able to even gain access to the Internet. Getting logged onto the Internet had become such a slow process that many teachers and students simply stopped trying to do so. In other cases, more persistent persons were able to get access, but the remaining classroom time to utilize the Internet resources was significantly reduced due to such delays. To be clear about the low speed of the old network, it needs to be pointed out that the Internet access speed on the old network was slower than a basic, dial-up, phone-line Internet access [which millions of people nationwide have rejected in favor of high-speed access, believing even that was too slow]. In short, the old network had become a serious detriment to the education of YISD students.

Once the high speed wide area network offering became reasonable and YISD could justify the expense in alignment with the updated version of the Technology Plan, YISD recognized that, if it chose to install a high-speed wide area network solution, it would no longer need the Routers for its network. Specifically, YISD would not need the Routers in the interim period because of the use of layer 3 switching in conjunction with the newer transport media [fiber optic cable] that was being used to deliver network access to the campuses. The Routers were not required anymore, under such high-speed wide area network.

In light of the fact that the Routers would not be needed for the YISD computer network if the high-speed wide area network was established, YISD investigated alternative uses for the Routers for eligible projects at eligible facilities. In other words, even though the original use of the Routers became obsolete, YISD looked for new uses for the Routers that were consistent with

the intent, scope, and eligibility requirements of the Program. YISD wanted any new use to be an eligible use at eligible facilities. As part of this, the Router serial numbers were inventoried and catalogued to the specific eligible site location to which they had been assigned; in other words, YISD kept track of exactly which Router went to which eligible location. It was not a situation where the Routers were to be transferred from eligible locations to ineligible locations relatively shortly after installation. In short, YISD did not want the Routers to go to waste.[3]

In Year 4 of the Program, YISD sought funding for a high-speed wide area network as part of its telecommunications request. YISD posted its Form 470 for Year 4 of the Program (the "Year 4 Form 470"). A true and correct copy of the Year 4 Form 470 is attached hereto as Exhibit "7" and is incorporated herein. After a procurement process, and subsequent award and signing of a contract for such project, YISD filed its Form 470 for Year 4 on January 16, 2001 (the "Year 4 Form 471"). A true and correct copy of the Year 4 Form 471 is attached hereto as Exhibit "8" and is incorporated herein. The SLD approved the Year 4 Form 471 by means of a Funding Commitment Decision Letter dated December 4, 2001 (the "Year 4 Funding Letter"). A true and correct copy of the Year 4 Funding Letter is attached hereto as Exhibit "9" and is incorporated herein. Attached hereto as Exhibit "10" is a true and correct copy of an illustration of the YISD high-speed wide area network.

Previously, due to the proposed establishment of the high-speed wide area network, YISD decided that the Routers should be used in connection with a Voice Over Internet Protocol a/k/a Voice Over IP a/k/a VOIP project for which funding was sought under Year 4 of the Program. A Voice Over IP project would allow YISD to consolidate its voice and data networks. YISD has a voice network and a separate data network [being the high-speed wide area network]. This project permits voices to travel over the data network lines, thereby allowing YISD to terminate at least one T-1 line per each of the sixty-odd campuses. Such T-1 lines are eligible for Priority 1 Program funding; through use of the Voice Over IP project, YISD could then eliminate Program funding requests for the terminated T-1 lines, saving Program funds. In addition, the Voice Over IP project also permitted a much greater capacity of voice to be carried than under the voice-only network. Importantly, the Voice Over IP project in Year 4 of the Program could utilize the Routers, since the equipment to be placed into the Nortel option 11 switches under that project would require routing [and thus routers] instead of layer 3 distribution. The use of the Routers on hand would therefore obviate the need to acquire new routers as part of that Voice Over IP

[3] It is also important to remember that YISD had also acquired over 20 similar routers using its own funds, which were similarly unnecessary for the high speed wide area network. Therefore, in addition to the share paid under the Program by YISD for the Routers [between 10%-19%], YISD also had a significant financial incentive to ensure that it received the benefit of the entire cost incurred by YISD for these other self-purchased routers. In other words, YISD had invested in 20 routers using its own money, as compared to 37 routers under the Program.